

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

AMERICAN CLASSIC VOYAGES CO., *et al.*,  
  
Debtors.

Chapter 11  
(Jointly Administered)

Case No. 01-10954 (KJC)

AMERICAN CLASSIC VOYAGES CO., *et al.*,  
DEBTORS, by and through PAUL GUNTHER,  
PLAN ADMINISTRATOR,

Plaintiffs,

- against -

JP MORGAN CHASE BANK, NATIONAL CITY  
BANK OF MICHIGAN/ILLINOIS, and HIBERNIA  
NATIONAL BANK,

Defendants.

Adv. Pro. No. 03-56998 (KJC)

**PLAINTIFFS' DESIGNATION OF ISSUES AND RECORD ON APPEAL**

American Classic Voyages Co. ("AMCV"), *et al.* ("Plaintiffs"), through their undersigned counsel, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, designate the issues and record on appeal in connection with the Notice of Appeal (Docket No. 181) from the order of Bankruptcy Judge Kevin J. Carey, entered in the above-captioned adversary proceeding on the 27th day of April, 2007 (Docket No. 180), which order: (i) held that the Plaintiffs have not proven that the debtors were insolvent as required by Bankruptcy Code Section 547(b)(3); and (ii) entered judgment in favor of the defendants and against the Plaintiffs.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

1. Whether the Bankruptcy Court erred when it used an improper standard to evaluate whether the defendants had rebutted the statutory presumption of insolvency contained at 11 U.S.C. §547(f)?

2. Whether the Bankruptcy Court erred when it found that debtors' management's unsubstantiated projections, upon which defendants' expert's opinions respecting solvency were based, were sufficient to support defendants' expert's solvency analysis?

3. Whether the Bankruptcy Court erred when it found that the statutory presumption of insolvency was rebutted by defendants where sufficient non-speculative evidence was neither adduced through trial testimony nor presented in the exhibits in a manner that met the standard required to rebut the presumption?

4. Whether the Bankruptcy Court erred when it based its decision on the testimony and report of defendants' expert, Brian Calvert, whose testimony and opinion was wholly impugned at trial?

5. Whether the Bankruptcy Court erred when it made findings of fact that are erroneous or unsupported in the record?

6. Whether the Bankruptcy Court erred when it based its finding that Plaintiffs failed to reestablish insolvency on the Court's erroneous observation that plaintiffs' expert, Perry Mandarino, did not conduct a "going concern" analysis of the debtors' financial condition?

7. Whether the Bankruptcy Court erred when it failed to find from the unrefuted and irrefutable evidence that the fair market price that would have been obtained for the assets of AMCV, even sold as an operating entity, would have been

insufficient to pay AMCV's debt and preferred stock obligations, thus rendering AMCV insolvent on the date of the transfer at issue?

## II. DESIGNATION OF RECORD ON APPEAL

Item No.	Docket No.	Date	Document Description
1	181	05/07/2007	Notice of Appeal
2	180	04/27/2007	Order Entering Judgment for Defendants on the Issue of Solvency
3	179	04/27/2007	Memorandum Opinion that Plaintiffs Have Not Proven That the Debtors Were Insolvent
4	177	10/04/2006	Plaintiffs' Letter to Judge Carey Regarding Clarification on Experts Listing in Plaintiffs' Response Brief
5	176	09/29/2006	Plaintiffs' Answering Brief to Bank Defendants' Post-Trial Solvency Brief, Proposed Findings of Fact, and Conclusions of Law (with exhibits)
6	175	09/29/2006	Bank Defendants' Response to Plaintiffs' Proposed Findings of Fact, Conclusions of Law, and Post-Trial Brief
7	174	09/08/2006	Bank Defendants' Findings of Fact and Conclusions of Law (with attachment)
8	173	09/08/2006	Bank Defendants' Post-Trial Solvency Brief
9	172	09/08/2006	Plaintiffs' Proposed Findings of Fact, Conclusions of Law, and Post-Trial Brief (with attachment)
10	170	08/30/2006	Scheduling Order Regarding Post-Trial Briefing and Trial Exhibits
11	165	08/08/2006	Transcript from Insolvency Trial – Day 1, July 20, 2006
12	166	08/08/2006	Transcript from Insolvency Trial – Day 2, July 21, 2006
13	167	08/08/2006	Transcript from Insolvency Trial – Day 3, July 24, 2006
14	168	08/08/2006	Transcript from Insolvency Trial – Day 4, July 25, 2006
15	163	07/21/2006	Order Setting Matter for Trial and Resolution of Motions in Limine
16	155	07/12/2006	Bank Defendants' Solvency Trial Brief
17	154	07/12/2006	Plaintiffs' Pretrial Brief (with attachments)
18	133	06/23/2006	Joint Pre-Trial Memorandum (with exhibits)
18a	117	01/24/2006	Order Scheduling Certain Adversary Proceedings For Trial On The Common Issue of Determining Pre-Petition Insolvency For All Transfers For The Applicable Debtors

Item No.	Docket No.	Date	Document Description
<u>See</u> Volume 3	N/A	N/A	Plaintiffs' Trial Exhibits (see Attachment A)
<u>See</u> Volume 4	N/A	N/A	Defendants' Trial Exhibits (see Attachment B)

Dated: May 17, 2007

Respectfully submitted,

**MONZACK AND MONACO P.A.**

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**Attachment A****Plaintiffs' Trial Exhibits Designated on Appeal**

<b>Item No.</b>	<b>PTE No.</b>	<b>Document Description</b>
19	3	Complaint in Adversary Proceeding against JP Morgan Chase, Nation City Bank, and Hibernia National Bank, Adv. Pro. No. 03-56998, filed on October 16, 2003
19a	6	Second Amended Answer and Affirmative Defenses to Complaint filed by JP Morgan Chase Bank
20	7	Answer to Complaint filed by National City
21	8	Answer to Complaint filed by Hibernia National Bank
22	9	Report on Solvency Analysis dated February 18, 2005 by Traxi LLC
23	9-1	Schedules to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
24	9-2	Exhibit A to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
25	9-3	Exhibit B to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
26	9-4	Exhibit C to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
27	9-5	Exhibit D to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
28	9-6	Exhibit E to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
29	9-7	Exhibit F to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
30	9-8	Exhibit G to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
31	9-9	Exhibit H to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
32	9-10	Exhibit I to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
33	9-11	Exhibit J to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
34	9-12	Exhibit K to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
35	9-13	Exhibit L to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
36	9-14	Exhibit M to the February 18, 2005 Report on Solvency Analysis by Traxi LLC
37	10	Rebuttal Report of Perry M. Mandarino dated January 31, 2006
38	10-1	Exhibit A to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
39	10-2	Exhibit B to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
40	10-3	Exhibit C to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
41	10-4	Exhibit C-1 to the January 31, 2006 Rebuttal Report of Perry M. Mandarino

Item No.	PTE No.	Document Description
42	10-5	Exhibit C-2 to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
43	10-6	Exhibit D to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
44	10-7	Exhibit E to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
45	10-8	Exhibit F to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
46	10-9	Exhibit G to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
47	10-10	Exhibit H to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
48	10-11	Exhibit H-1(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
49	10-12	Exhibit H-1(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
50	10-13	Exhibit H-2(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
51	10-14	Exhibit H-2(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
52	10-15	Exhibit H-3(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
53	10-16	Exhibit H-3(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
54	10-17	Exhibit H-4(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
55	10-18	Exhibit H-4(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
56	10-19	Exhibit H-5(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
57	10-20	Exhibit H-5(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
58	10-21	Exhibit H-6(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
59	10-22	Exhibit H-6(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
60	10-23	Exhibit J to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
61	10-24	Exhibit J-1 to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
62	10-25	Exhibit K to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
63	10-26	Exhibit K-1(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
64	10-27	Exhibit K-1(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
65	10-28	Exhibit K-2(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
66	10-29	Exhibit K-2(B) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
67	10-30	Exhibit K-3(A) to the January 31, 2006 Rebuttal Report of Perry M. Mandarino
68	15	AMCV's Form 10-K for the Year Ended December 31, 2000
69	16	AMCV's Form 10-Q for the Quarterly Period Ended March 31, 2001

Item No.	PTE No.	Document Description
70	17	AMCV's Form 10-Q for the Quarterly Period Ended June 30, 2001
71	20	Minutes of the Meeting of the Board of Directors of American Classic Voyages Co. on May 9, 2001
72	21	E-mail from Jeff Klein to Bill Pate and Don Liebenritt dated May 7, 2001 attaching updated summaries prepared for a board meeting
73	24	Email dated July 18, 2001 from Jeff Klein to Jordan Allen, Philip Calian, Randall Talcott, Don Liebenritt, Kathleen Eibl, Perzek and David Heller regarding state of bank discussions
74	25	Email dated August 20, 2001 from Philip Calian to Don Liebenritt, Jeff Klein, Stacey Brown, Kim Kumiega, Jordan Allen, Randall Talcott, Fran Sevcik and Rod McLeod regarding AMCV research note
75	26	Memo dated May 11, 2001 from Jordan Allen to Don Liebenritt, Jeff Klein and Bill Pate regarding Meeting with Latham & Watkins on May 14, 2001
76	27	Memo dated May 22, 2001 from Jordan Allen to Philip Calian, Randall Talcott, David Heller, Jeff Klein and Don Liebenritt regarding summary of May 21, 2001 and action items
77	28	Email dated May 25, 2001 from Jordan Allen to David Heller, Don Liebenritt and Jeff Klein attaching a memo titled, "Game Plan"
78	29	Email dated July 9, 2001 from Jeff Klein to Don Liebenritt, Bill Pate and Kathleen Eibl forwarding an article about AMCV in Chicago's Crain Communications, Inc.
79	30	Email dated July 13, 2001 from Philip Calian to Jordan Allen, Don Liebenritt, Jeff Klein, Kim Kumiega and Stacey Brown forwarding an article about AMCV in Travel Management Daily
80	31	Memo dated September 10, 2001 from Philip Calian to the board of directors enclosing the quarterly board book for the quarterly board of directors meeting scheduled for September 12, 2001
81	32	Memo dated June 21, 2001 from Timothy Barnes (of Latham & Watkins) to Jordan Allen and David Heller regarding bankruptcy treatment of secured creditor obligations
82	33	Email dated July 27, 2001 from Jordan Allen to David Heller, Philip Calian, Randall Talcott, Jeff Klein and Don Liebenritt attaching a list of key dates
83	34	Email dated July 25, 2001 from Jordan Allen to Don Liebenritt and Philip Calian regarding Ingalls and discussion with David Heller regarding setting up a bankruptcy remote entity
84	36	Email dated August 8, 2001 from Jim Sanford and Don Liebenritt regarding status of negotiations between AMCV and Ingalls
85	37	Email dated August 12, 2001 from Jim Sanford to Don Liebenritt regarding status of negotiations between AMCV and Ingalls and attaching exhibits to settlement agreement
86	38	Email dated August 15, 2001 from Philip Calian to Jordan Allen and Don Liebenritt regarding discussion points for discussion to support MARAD
87	39	Email dated August 31, 2001 from Jorge Romero (of Preston Gates) to Don Liebenritt regarding MARAD and attaching draft amendment to the AMCV/Ingalls settlement agreement
88	40	Agenda for the June 27, 2001 meeting of the board of directors



Item No.	PTE No.	Document Description
89	52	Chart of AMCV and Subsidiaries Debt and Other Significant Liabilities and attached schedules
90	56	Chart comparing FY 2000 vs. FY 2001 Projected
91	57	Chart titled GC Forecast / Comparison to Actual Results
92	58	Chart of trading price / volume of AMCV stock for the period January 2, 1998 to June 29, 2001
93	59	ACV Historical Stock Prices for the period April 24, 2000 to April 21, 2005
94	60	Chart titled American Classic Voyages GC vs. 07/01 Projections
95	61	Cost of Capital, 2001 Yearbook, by Ibbotson Associates
96	63	Memo dated August 9, 2001 regarding Chase's discussion with Sam Zell and signed by CC Wardell
97	66	Chase loan approval memo (page 3) dated August 15, 2001
98	67	Chase loan approval memo (pages 1 and 2) dated August 15, 2001
99	81	Agreement dated June 28, 2002 between Northrop Grumman Ship Systems, Inc. and the Maritime Administration, United States Department of Transportation
100	82	September 10, 2001 memorandum from Randall Talcott to Board of Directors re: Cash Projections
101	83	Business Valuation Review: The Long Term Relationships between Capital Expenditures and Depreciation Across Industries: Important Data for Capitalized Income Based Valuations by Daniel L. McConaughy (March 2004)
102	98	February 27, 2001 Projections
103	103	Excerpts from <i>Valuing a Business: The Analysis and Appraisal of Closely Held Companies</i> (Second Edition) by Shannon P. Pratt
104	105	Excerpts from <i>Investment Valuation: Tools and Techniques for Determining the Value of Any Asset</i> (Second Edition) by Aswath Damodaran
105	106	Excerpts from <i>Valuing a Business: The Analysis and Appraisal of Closely Held Companies</i> by Shannon P. Pratt, Robert F. Reilly and Robert P. Schweih
106	107	Excerpts from Stocks, Bonds, Bills and Inflation, Valuation Edition 2001 Yearbook, by Ibbotson Associates, Inc. 2001.
107	108A	Excerpts from Stocks, Bonds, Bills and Inflation, Valuation Edition 2001 Yearbook, by Ibbotson Associates, Inc. 2006 (p.198).
108	109	Reilly Report, dated April 29, 2005
109	109A	Seven Scenarios Adjusting Calvert's DCF Analysis
110	113	Excerpt from Stocks, Bonds, Bills and Inflation, Valuation Edition 2001 Yearbook, by Ibbotson Associates, Inc. 2005. (from Calvert's work papers)



**Attachment B****Defendants' Trial Exhibits Designated on Appeal**

<b>Item No.</b>	<b>DTE No.</b>	<b>Document Description</b>
111	21	Minutes of the Meeting of the Board of Directors of American Classic Voyages Co. , March 16, 2001
112	22	May 8, 2001 American Classic Voyages Co. Press Release and related materials
113	24	September 12, 2001 American Classic Voyages Co. Board of Directors Meeting Board Package (including minutes of June 27, 2001 meeting of Board of Directors of American Classic Voyages, Co.)
114	47	Page Bates Stamped AMCV 51713 - American Classic Voyages financial projections excerpt, dated July 31, 2001
115	48	Delta Queen Steamboat Co. Delta Queen Coastal Voyages Confidential Information Memorandum, dated as of December 2001
116	50	American Classic Voyages Co. Board of Directors Meeting book, March 16, 2001
117	56	Group of financial documents TRAX 1571-1701
118	57	Delta Queen Steamboat Company Due Diligence Report
119	58	The Contribution of the North American Cruise Industry to the U.S. Economy in 2001, International Council of Cruise Lines, dated August 2002
120	59	August 28, 2001 letter from Alan J. Rude to Sam Zell, with attached offer to purchase Delta Queen Steamboat Company for \$190 million
121	60	October 3, 2001 letter from Robert Yamin to Jordan Allen re: Unsolicited Offer
122	61	October 12, 2001 letter from Ethan J. Cheramie to Randall Talcott re: Offer to acquire Delta Queen Steamboat Co.
123	64	Addendum Report of Robert F. Reilly (Willamette Management Associates) on behalf of American Airlines, Inc. and Equity Group Investments, L.L.C., dated December 12, 2005
124	65	Handwritten notes of Robert F. Reilly
125	74	Handwritten notes of Kathleen Eibl
126	75	Memorandum from Kathleen Eibl (EGI) to File regarding AMCV August Review
127	76	Memorandum from Kathleen Eibl (EGI) to File regarding AMCV September Review
128	77	In re American Classic Voyages, Co., Transcript of proceedings before the United States Bankruptcy Court for the District of Delaware, December 13, 2001

Item No.	DTE No.	Document Description
129	78	In re American Classic Voyages, Co., Transcript of proceedings before the United States Bankruptcy Court for the District of Delaware, December 18, 2001
130	92	Presentation to the Creditors of American Classic Voyages Co., by Chanin Capital Partners and American Marine Advisors, dated March 5, 2002
131	105	May 25, 2001 memo from Phil Calian to AMCV Board, with attachments
132	129	Expert Report of Brian Calvert, September 13, 2005
133	130	Calvert Ex. 1 - Professional Qualifications of R. Brian Calvert
134	131	Calvert Ex. 2 - Presentations Made by R. Brian Calvert
135	132	Calvert Ex. 3 - Depositions Given by R. Brian Calvert
136	133	Calvert Ex. 4 - Summary of Documents Reviewed
137	134	Calvert Ex. 5 - Company Structure Organization Chart
138	135	Calvert Ex. 6 - Financial Statement Highlights of Peer Companies
139	136	Calvert Ex. 7 - Weighted Average Cost of Capital Calculation
140	137	Calvert Ex. 7B - Weighted Average Cost of Debt Calculation
141	138	Calvert Ex. 8 - AMCV Balance Sheet
142	139	Calvert Ex. 9 - AMCV Income Statement
143	140	Calvert Ex. 10 - AMCV Statement of Cash Flow
144	141	Calvert Ex. 11 - AMCV Discounted Cash Flow Calculation
145	142	Calvert Ex. 12 - AMCV Shareholder Value Calculation
146	143	Calvert Ex. 13 - DQSC Balance Sheet
147	144	Calvert Ex. 14 - DQSC Income Sheet
148	145	Calvert Ex. 15 - DQSC Statement of Cash Flow
149	146	Calvert Ex. 16 - DQSC Discounted Cash Flow Calculation
150	147	Calvert Ex. 17 - DQSC Shareholder Value Calculation
151	148	Calvert Ex. 18 - Comparable Companies
152	149	Calvert Ex. 19 - Comparable Company BEV/EBITDA Ratio
153	151	AMCV 2 <sup>nd</sup> Quarter 10Q
154	162	Demonstrative Exhibit No. 1
155	163	Demonstrative Exhibit No. 2
156	164	Demonstrative Exhibit No. 3
157	165	Demonstrative Exhibit No. 4
158	166	Demonstrative Exhibit No. 5
159	167	Demonstrative Exhibit No. 6
160	169	Demonstrative Exhibit No. 8
161	170	Demonstrative Exhibit No. 9
162	171	Demonstrative Exhibit No. 10
163	176	Transcript of November 27, 2001 Deposition of Jordan B. Allen
164	177	Transcript of December 13, 2001 Testimony of Jordan B. Allen
165	178	Transcript of December 13, 2001 Testimony of Paul M. Leand, Jr.

<b>Item No.</b>	<b>DTE No.</b>	<b>Document Description</b>
166	180	Transcript of January 27, 2005 Deposition of Jordan B. Allen
167	183	Transcript of April 6, 2005 Deposition of Randall Talcott
168	184	Transcript of April 7, 2005 Deposition of Philip Calian
169	185	Transcript of April 8, 2005 Deposition of Jordan B. Allen
170	186	Transcript of April 19, 2005 Deposition of Dennis J. Szefel
171	189	Transcript of May 19, 2005 Deposition of Randall Talcott
172	196	Handwritten notes dated October 14, 2003 (TRAX 4689-4690)
173	241	Credit Facility for The Delta Queen Steamboat Co., dated February 25, 1999
174	242	Amended and Restated Credit Agreement, dated September 14, 2000
175	262	Merrill Lynch Affidavit (Brent Beverley)